

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT SEATTLE

GREEN ISLAND HILLS COMMUNITY
ASSOCIATION, a Washington non-profit
corporation, ROBERT TEAGUE, JACK
TRAMMELL and JAMES HERRGOTT,
members of the Board of Directors of Green
Island Hills Community Association and in
their individual capacities,

Plaintiffs,

vs.

CONTINENTAL CASUALTY COMPANY, a
foreign corporation,

Defendant.

Cause No. 2:10-cv-01534 RSL

ANSWER TO COMPLAINT

COMES NOW DEFENDANT CONTINENTAL CASUALTY COMPANY
("Continental"), by and through the undersigned attorneys, and admits, denies, and alleges as
follows:

1. Parties

1.1.1 In answer to paragraph 1.1.1, Continental admits that Plaintiff Green Island Hills
Community Association ("GIHCA") is a Washington non-profit corporation. Continental

ANSWER TO COMPLAINT – 1
USDC WD WA/SEA CAUSE NO. 2:10-cv-01534 RSL

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1 further admits that GIHCA owns a professional liability policy issued by Continental (the
2 “Continental Policy”).

3 1.1.2 Continental lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations in paragraph 1.1.2 of Plaintiffs’ Complaint and, on that basis, denies the
5 same.

6 1.2 Continental admits that it is an Illinois corporation doing business in the State of
7 Washington. Continental further admits that it holds contractual and claim handling
8 responsibilities for GIHCA’s professional liability policy.

9 2. Jurisdiction and Venue

10 2.1 In answer to paragraph 2.1 of Plaintiffs’ Complaint, Continental admits that the
11 Superior Court could have concurrent jurisdiction over the subject matter of this action and
12 could have personal jurisdiction over the parties under RCW 4.28.185(1)(d). Continental
13 denies that there is presently jurisdiction in Superior Court because this case has been removed
14 to the United States District Court for the Western District of Washington based upon diversity
15 of citizenship.

16 2.2 In answer to paragraph 2.2 of Plaintiffs’ Complaint, Continental denies that
17 Island County Superior Court is the proper venue for this action under RCW 48.05.220, RCW
18 4.12.025, and Civil Rule 82(a)(3), as this case has been removed to U.S. District Court.

19 3. Facts

20 3.1 In answer to paragraph 3.1 of Plaintiffs’ Complaint, Continental admits that, on
21 or about January 23, 2007, GHICA purchased a “Not-for-Profit Organization/Association
22 Professional Liability Policy,” policy number 0250511279, from Continental (“Continental
23 Policy”).

3.2 In answer to paragraph 3.2 of Plaintiffs’ Complaint, Continental denies the
allegations stated therein.

1 3.3 In answer to paragraph 3.3 of Plaintiffs' Complaint, Continental denies that
2 Plaintiff has fully and accurately stated the policy language and terms and, on that basis, denies
3 the allegations in paragraph 3.3 of the Complaint. The terms of the Continental Policy speak
4 for themselves and are subject to proof at trial.

5 3.4 In answer to paragraph 3.4 of Plaintiffs' Complaint, Continental admits that, on
6 or about August 23, 2007, seven homeowners ("Homeowner Plaintiffs") brought a lawsuit in
7 Superior Court for the State of Washington, Island County against GIHCA, Robert Teague,
8 Jack Trammell and James Herrgott. The allegations and subject of the Homeowner Plaintiffs'
9 lawsuit speak for themselves, are subject to proof at trial, and thus require no answer. To the
10 extent an answer could be required, Continental denies the same. Continental lacks knowledge
11 or information sufficient to form a belief about the truth of the remaining allegations of
paragraph 3.4 and, on that basis, denies the same.

12 3.5 In answer to paragraph 3.5 of Plaintiffs' Complaint, the terms of Homeowner
13 Plaintiffs' former lawsuit speak for themselves, are subject to proof at trial; thus, no answer is
14 required. To the extent an answer could be deemed required, Continental lacks knowledge or
15 information sufficient to form a belief about the truth of the allegations and, on that basis,
16 denies the same. Continental lacks knowledge or information sufficient to form a belief about
the truth of the remaining allegations in paragraph 3.5 and, on that basis, denies the same.

17 3.6 In answer to paragraph 3.6 of Plaintiffs' Complaint, Continental lacks
18 knowledge or information sufficient to form a belief about the truth of the allegations and, on
19 that basis, denies the same.

20 3.7 In answer to paragraph 3.7 of Plaintiffs' Complaint, Continental lacks
21 knowledge or information sufficient to form a belief about the truth of the allegations and, on
that basis, denies the same.

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1 3.8 In answer to paragraph 3.8 of Plaintiffs' Complaint, Continental lacks
2 knowledge or information sufficient to form a belief about the truth of the allegations and, on
3 that basis, denies the same.

4 3.9 In answer to paragraph 3.9 of Plaintiffs' Complaint, Continental lacks
5 knowledge or information sufficient to form a belief about the truth of the allegations and, on
6 that basis, denies the same.

7 3.10 In answer to paragraph 3.10 of Plaintiffs' Complaint, Continental admits that it
8 received a copy of a Homeowner Plaintiffs' complaint on or about August 29, 2007.
9 Continental further admits that it denied coverage for the Homeowner Plaintiffs' complaint, but
10 denies Plaintiffs' characterization of the basis for the denial. Continental lacks knowledge or
11 information sufficient to form a belief about the truth of the remaining allegations in paragraph
12 3.10 and, on that basis, denies the same.

13 3.11 In answer to paragraph 3.11 of Plaintiffs' Complaint, Continental admits that
14 GIHCA objected to Continental's denial of the subject claim. Continental lacks knowledge or
15 information sufficient to form a belief about the truth of the remaining allegations in paragraph
16 3.11 and, on that basis, denies the same.

17 3.12 In answer to paragraph 3.12 of Plaintiffs' Complaint, Continental lacks
18 knowledge or information sufficient to form a belief about the truth of the allegations and, on
19 that basis, denies the same.

20 3.13 In answer to paragraph 3.13 of Plaintiffs' Complaint, Continental lacks
21 knowledge or information sufficient to form a belief about the truth of the allegations and, on
22 that basis, denies the same.

23 3.14 In answer to paragraph 3.14 of Plaintiffs' Complaint, Continental admits that, on
or about January 28, 2008, GIHCA's claim was denied. Continental further admits that it has
not provided a defense for the asserted claim. Continental lacks knowledge or information

1 sufficient to form a belief about the truth of the remainder of the allegations in paragraph 3.14
 2 and, on that basis, denies the same.

3 3.15 In answer to paragraph 3.15 of Plaintiffs' Complaint, Continental admits that it
 4 denied Plaintiffs' claim. Continental lacks knowledge or information sufficient to form a belief
 5 about the truth of the remaining allegations in paragraph 3.15 and, on that basis, denies the
 6 same.

7 **FIRST CLAIM FOR RELIEF – BREACH OF CONTRACT**

8 4. In answer to paragraph 4 of Plaintiffs' Complaint, Continental incorporates by
 9 reference its answers to the foregoing paragraphs.

10 5. In answer to paragraph 5 of Plaintiffs' Complaint, Continental denies Plaintiffs'
 11 allegations therein.

12 6. In answer to paragraph 6 of Plaintiffs' Complaint, Continental denies Plaintiffs'
 13 allegations therein.

14 **SECOND CLAIM FOR RELIEF – INSURANCE BAD FAITH**

15 7. In answer to paragraph 7 of Plaintiffs' Complaint, Continental incorporates by
 16 reference its answers to the foregoing paragraphs.

17 8. In answer to paragraph 8 of Plaintiffs' Complaint, Continental admits that an
 18 insurer has duties to act in good faith and with reasonable care in claim handling. Continental
 19 denies that failure to defend Plaintiffs' claim was unreasonable, frivolous and constituted bad
 20 faith. Continental lacks knowledge or information sufficient to form a belief about the truth of
 21 the remaining allegations in paragraph 8 and, on that basis, denies the same.

22 9. In answer to paragraph 9 of Plaintiffs' Complaint, Continental denies Plaintiffs'
 23 allegations therein.

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**THIRD CLAIM FOR RELIEF - VIOLATIONS OF WASHINGTON'S CONSUMER
PROTECTION ACT**

10. In answer to paragraph 10 of Plaintiffs' Complaint, Continental incorporates by reference its answers to the foregoing paragraphs.

11. In answer to paragraph 11 of Plaintiffs' Complaint, the substance and legal effect of WAC 284-30-330 speak for themselves and Plaintiffs are left to their proof at trial; thus, no answer is required. Continental denies that it violated WAC 284-30-330. Continental lacks knowledge or information sufficient to form a belief about the truth of any remaining allegations in paragraph 11 and, on that basis, denies the same.

12. In answer to paragraph 12 of Plaintiffs' Complaint, the substance and legal effect of WAC 284-30-362 speak for themselves and Plaintiffs are left to their proof at trial. Continental denies that it violated WAC 284-30-362. Continental lacks knowledge or information sufficient to form a belief about the truth of any remaining allegations in paragraph 12 and, on that basis, denies the same.

13. In answer to paragraph 13 of Plaintiffs' Complaint, the substance and legal effect of WAC 284-30-370 speak for themselves and Plaintiffs are left to their proof at trial. Continental denies that it violated WAC 284-30-370. Continental lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 13 and, on that basis, denies the same.

14. In answer to paragraph 14 of Plaintiffs' Complaint, Continental admits that the business of insurance is one involving the public interest. Continental denies that it violated the Consumer Protection Act, denies that it breached duties to Plaintiffs, and denies that it failed to comply with Washington's regulations. Continental lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 14 and, on that basis, denies the same.

1 15. In answer to paragraph 4 of Plaintiffs' Complaint, Continental denies the
2 allegations therein.

3 **PLAINTIFFS' RELIEF REQUESTED**

4 Continental denies that Plaintiffs are entitled to the relief requested in paragraphs A
5 through D of the Complaint.

6 **AFFIRMATIVE DEFENSES**

7 Discovery and investigation may reveal that one or more of the following affirmative
8 defenses may be available to Continental. Continental therefore asserts these affirmative
9 defenses in order to preserve the right to assert them. Upon completion of discovery, and if the
10 facts warrant, Continental may withdraw any of these affirmative defenses as may be
appropriate.

11 To the extent that any matters designated below as affirmative defenses should be
12 treated as counterclaims, Continental respectfully requests the Court to exercise its authority
13 under the Federal Rules of Civil Procedure, Rule 8(c), to treat the pleading as if a proper
14 designation had been made. By including certain defenses herein, Continental does not
15 concede that it has assumed any applicable burden of proof.

16 **First Affirmative Defense**

17 Plaintiffs' Complaint and every claim therein fail to state a claim upon which relief may
18 be granted.

19 **Second Affirmative Defense**

20 Plaintiffs' claims are barred in whole or in part by the applicable statute of limitation
and by any contractual limitation period applicable to the Continental Policy.

21 **Third Affirmative Defense**

22 Plaintiffs' claims and rights are defined and controlled by the terms, definitions,
23 endorsements, exclusions, conditions, limits of liability and other provisions contained in the

1 Continental Policy; and Plaintiffs' claims are barred or limited in whole or in part by such
2 terms, definitions, endorsements, exclusions, conditions, limits of liability and other provisions
3 of the Continental Policy.

4 **Fourth Affirmative Defense**

5 Plaintiffs' claims are barred to the extent that Plaintiffs are unable to establish the terms,
6 definitions, endorsements, conditions and other provisions of the Continental Policy.

7 **Fifth Affirmative Defense**

8 Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs have failed to
9 comply with applicable notice provisions of the Continental Policy or applicable law.

10 **Sixth Affirmative Defense**

11 Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs failed to
12 comply with a condition precedent and/or conditions subsequent to liability or coverage.

13 **Seventh Affirmative Defense**

14 Plaintiffs' claims are barred in whole or in part to the extent that claims or events on
15 which the claims are based do not constitute a "Wrongful Act" as defined by the Continental
16 Policy.

17 **Eighth Affirmative Defense**

18 Plaintiffs' claims are barred in whole or in part to the extent that claims and/or events
19 giving rise the Plaintiffs' claims are "Interrelated Wrongful Acts" as defined by the Continental
20 Policy for which there is no coverage.

21 **Ninth Affirmative Defense**

22 Plaintiffs' claims are barred in whole or in part by the Continental Policy's exclusion of
23 any Wrongful Act or any matter, fact, circumstance, situation, transaction, or event which has
24 been the subject of any claim made prior the effective date of the asserted policy or of any
25 notice given during any prior policy of which the asserted policy is a successor.

Tenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent the claim asserted seeks damages that do not constitute a "Loss" as defined by the Continental Policy.

Eleventh Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the Continental Policy's exclusion of any other Wrongful Act whenever occurring, which, together with a Wrongful Act which has been the subject of such claim or such notice, would constitute Interrelated Wrongful Acts.

Twelfth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the Continental Policy's exclusion of a claim based upon, directly or indirectly arising out of, or in any way involving any civil, criminal or administrative proceeding prior to or pending before the policy or any fact, circumstance, situation, transaction or event underlying in such proceeding.

Thirteenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part because the claims alleged by Plaintiffs involves one claim involving earlier events or alleged Wrongful Acts with Interrelated Wrongful Acts that are considered one Claim dated before issuance of the Continental Policy or a policy to which the asserted policy is a successor.

Fourteenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by Continental Policy endorsements or exclusions barring claims for damages to tangible property, loss of use, or destruction or deterioration of any tangible property, or failure to supervise, repair or maintain tangible property.

Fifteenth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by Continental Policy endorsements or exclusions barring claims for the cost of any non-monetary relief, including without limitation

1 any costs associated with compliance with any injunctive relief of any kind or nature imposed
2 by any judgment or settlement.

3 **Sixteenth Affirmative Defense**

4 Plaintiffs' claims are barred in whole or in part to the extent the claims asserted are not
5 in excess of other insurance or exceed the limits of the Continental Policy.

6 **Seventeenth Affirmative Defense**

7 Plaintiffs' claims are barred in whole or in part to the extent that any Loss, damages or
8 claims asserted did not occur or arise during the effective period of the Continental Policy.

9 **Eighteenth Affirmative Defense**

10 Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs failed to act
11 in compliance with a statute, regulation, or Court order.

12 **Nineteenth Affirmative Defense**

13 Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs failed to
14 exercise reasonable care and diligence to mitigate, minimize or avoid its alleged damages.

15 **Twentieth Affirmative Defense**

16 Plaintiffs' claims are barred in whole or in part by the doctrines of waiver, estoppel, and
17 laches.

18 **Twenty-First Affirmative Defense**

19 Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs seek
20 reimbursement or damages for sums or actions voluntarily undertaken including, without
21 limitation, those liabilities assumed by or negotiated for by contract.

22 **Twenty-Second Affirmative Defense**

23 Plaintiffs' claims are barred in whole or in part by Continental Policy endorsements or
exclusions of claims for punitive, treble, exemplary, fines or penalties, or violations of law.

Twenty-Third Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs, their predecessor, successors, agents, and/or brokers failed to fully and fairly inform or provide Continental with material facts concerning ongoing claims, pending complaints or claims or events giving rise to such claims constituting a known, expected loss or claim in progress.

Twenty-Fourth Affirmative Defense

Plaintiffs' claims are barred in whole or in part because individual plaintiffs may not be insureds to whom Continental owes a duty under the Continental Policy.

Twenty-Fifth Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs seek to recover sums neither reasonably nor necessarily incurred or incurred voluntarily without the written consent of Continental.

Twenty-Sixth Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent that the Continental Policy does not provide coverage for preventing future damages, costs incurred in preventing future damages, or costs of complying with federal, state or local rules, regulations, laws, ordinances, permits, licenses, orders, injunctions, or directives.

Twenty-Seventh Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs have failed to join necessary and indispensable parties.

Twenty-Eighth Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent that the Policy may not provide coverage for damages or injuries that were expected or intended from GIHCA's standpoint or that were not otherwise fortuitous.

Twenty-Ninth Affirmative Defense

Plaintiffs' claims are barred in whole or in part by the known loss or loss in progress rule.

Thirtieth Affirmative Defense

Plaintiffs' claims are barred in whole or in part to the extent that Plaintiffs gained any personal profit, remuneration or personal advantage or committed any fraudulent or criminal act.

Thirty-First Affirmative Defense

To the extent that Plaintiffs have failed to satisfy or comply with all terms, conditions, and provisions of the Continental Policy or to perform all obligations under the Policy, the Policy may not provide coverage.

Thirty-Second Affirmative Defense

Continental's liability, if any, is limited by the "other insurance" provision in the Continental Policy.

RESERVATION OF RIGHTS

Continental specifically reserves the right to amend its answer to add affirmative defenses, counterclaims, cross-claims, or to institute third-party actions, as additional facts are obtained through discovery and investigation.

DEFENDANT'S REQUESTED RELIEF

WHEREFORE, having fully responded to Plaintiffs' Complaint, Continental prays as follows:

1. That all relief requested by Plaintiffs be denied and that all claims asserted by Plaintiffs be dismissed with prejudice;

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4. Such other relief as this Court deems just and proper.

SOHA & LANG, P.S.

Attorneys for Defendant

DECLARATION OF SERVICE

STATE OF WASHINGTON)
)
COUNTY OF KING)


I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action; my business address is SOHA & LANG, PS, 1325 Fourth Avenue, Suite 2000, Seattle, WA 98101-2570.

On September 28, 2010, a true and correct copy of **Answer to Complaint (with attached Declaration of Service)** was served on parties in this action **via CM/ECF:**

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Executed on this 28th day of September, 2010, at Seattle, Washington.

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct.


Emily DeBow-Garcia
Legal Secretary to Steven Soha